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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 07 232 51532

AUG 0 3 2010

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) dismissed the appeal on its merits. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a faculty associate at the University of Texas Southwestern Medical Center (UTSWMC), Dallas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO upheld the director's findings.

On motion, counsel states that the petitioner was never advised that he would need to demonstrate an influence in his own field of imaging rather than focusing on the results of the biological research performed on imaging equipment that he supported. The director's request for additional evidence, however, specifically requested evidence as to how the beneficiary's work had "already significantly impacted the fields of physics and biophysics." *Matter of Soriano* 19 I&N Dec. 764, 766 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

The petitioner submits a letter discussing work from a colleague that only met the petitioner around the time of filing, articles that postdate the filing of the petition, evidence of upcoming presentations, emails that postdate the filing of the petition, news article that postdate the filing of the petition and an undated intellectual property questionnaire listing the petitioner as one of the individuals who had contributed to the conception of the invention. As the questionnaire is undated, the petitioner has not established that it predates the filing of the petition. The AAO specifically stated in its decision that the petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). As such, we will not consider evidence of achievements after the date of filing as new evidence that can be considered on motion. Rather, such evidence must support a new petition.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

The petitioner has not filed a proper motion to reopen or reconsider. His request was not accompanied by any evidence that can be considered or arguments based on precedent decisions. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider *at the time it is filed*; no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

ORDER: The motion is dismissed.